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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 0

LIN 04 202 51688

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral research associate at the University of Washington. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In an introductory letter submitted with the initial filing, counsel states:

> [The petitioner] has been one of the top scientists in the field of immunology and nephrology research for more than eighteen (18) years. Presently, [the petitioner] focuses on the mechanism of anti-cancer drug resistance and the mechanism of fetus protection from toxic materials during pregnancy. He is currently a key member of the National Institute of Health (NIH) established Specialized Center of Research (SCOR) program. More specifically, [the petitioner's] research deals with drug metabolism and is concerned with studies of the novel drug transport protein known as BCRP. BCRP stands for "Breast Cancer Resistance Protein." In this project, [the petitioner] made the important discovery that progesterone, an important pregnancy-related hormone, enhances the expression of BCRP at protein levels in the two human cell lines. . . .
>
> [At] Kochi Medical School in Japan . . . [the petitioner] made the following research findings. He discovered that iron deposition in renal tissue correlates with many clinical parameters and is an early and sensitive indicator of renal function damage. Moreover, he found that iron enhances some pro-inflammatory cytokines, which explained partly the mechanisms by which iron promotes the inflammatory process in patients with rheumatoid arthritis. Further, he demonstrated that iron inhibits the formation of multinucleated giant cell formation by human monocytes. This finding suggests that iron may suppress immunological function by inhibiting function of monocytes. Finally, he successfully synthesized TGF-beta RNA probe, which can be used for many other [types of] research.

The petitioner earned his baccalaureate degree in 1986, and it was in 2004 that counsel claimed that the petitioner "has been one of the top scientists in the field of immunology and nephrology research for more than eighteen (18) years." Counsel, therefore, seems to claim that the beneficiary has been "one of the top scientists in the field" for his entire professional career. This assertion, along with many other claims by counsel, appears to be somewhat exaggerated. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner qualifies for the waiver because he "has been recognized worldwide for his breakthrough achievements in the field of medical research," and he "holds the distinguished honor of many scholarly contributions to the field, which have assisted researchers around the world. His findings have received international recognition through publication in internationally leading peer-reviewed journals, which have been cited by other researchers in the field" (counsel's emphasis). Counsel lists the petitioner's published articles and conference presentations, calling them "highly significant contributions . . . which have placed him at the cutting edge" of his field. An article is not significant or influential simply because it exists in print or was presented at a conference; one must show the impact that the work has had on others in the field. As counsel acknowledges, one objective way to demonstrate this impact is through independent citation. Here, the petitioner demonstrates that other researchers have cited three of his articles an aggregate total of nine times. One of those citations was in the context of contradictory findings, prefaced with the phrase "some investigators disagree with our findings."

Counsel states: "many of the leading experts in the field have attested that [the petitioner's] extraordinary achievements and landmark studies are pioneering contributions to the field of medical research. . . . These experts represent prominent government, academia and industry research institutions from all over the world." Counsel, here, refers to eight witness letters that accompany the initial filing. Most of the letters are from faculty or former students at the University of Washington and Kochi Medical School. None of the witnesses describe the petitioner or his work in the hyperbolic language used by counsel. We will discuss examples of these letters below.

[redacted], an Assistant Professor at Kochi Medical School, calls the petitioner "an outstanding scientist" who "is really among the elites who have vast interdisciplinary knowledge." [redacted] states that the petitioner "was the first to point out that iron deposition is an early predictor of renal function damage. This observation contributed greatly to our understanding of the significance of iron on the progress of chronic renal disease."

[redacted], an Assistant Professor at the University of Washington, heads the laboratory where the petitioner now works. [redacted] hired the petitioner after receiving "strong recommendation letters from his previous supervisors in Japan stating that [the petitioner] was a reliable person who could work independently." [redacted] states that the petitioner "already obtained promising results indicating that pregnancy-related hormones may indeed regulate BCRP gene expression." [redacted] categorizes the petitioner as "an honest and hardworking researcher" who "quickly mastered the techniques used in his current research which he was not familiar with before joining my laboratory."

[redacted] Chief of the Laboratory of Pharmacology and Chemistry at the National Institute of Environmental Health Sciences, is a member of the advisory committee for the petitioner's project at the University of Washington. He states that the petitioner "is one of a small group of research experts who understand and work actively on BCRP," and that the petitioner "has the great potential to continue to make significant contributions to this field. His important scholarly contributions have already resulted in the recognition of his outstanding academic achievements."

Professor [redacted] of Fudan University offers essentially a biographical sketch of the petitioner's academic career, and states that the petitioner "has made several significant scientific contributions that have solidified his position as a highly respected scientist in nephrology, immunology and ABC transport fields. These contributions are often cited by other scientists working in the field." Regarding this last claim, we repeat the observation that the record shows only nine citations of the petitioner's work since 1994.

On June 16, 2005, the director issued a request for evidence, instructing the petitioner to submit further documentation to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director stated that the initial submission fails to set the petitioner apart from other researchers in his field. In response, the petitioner submits what counsel calls a "Citation Index Showing the Frequent Citation of [the petitioner's] Work." This "Index" consists of redundant copies of previously submitted printouts, showing that two of the petitioner's 1994 articles have been cited four times each (omitting the previously documented single citation of a third article). Elsewhere in the submitted documentation, a list shows five citations of one article; four of a second; and two of a third (including one self-citation by a co-author). Counsel refers to the "many citations" and "frequent citation" of the petitioner's work. If ten independent citations over eleven years qualify as "many" and "frequent," it is not clear what counsel would consider "few" or "infrequent."

The "Samples of Articles Citing [the petitioner's] Work" include "Expressions of receptors for advanced glycation end-products in occlusive vascular and renal disease," an article that appeared in *Nephrology Dialysis Transplantation* in 1996. Counsel quotes a sentence from this article, and asserts that the sentence refers to the petitioner's work. The sentence, which reads "The accumulation of AGEs in tissues has been correlated with the development of diabetic complications," is followed by the notation "[4,6-14]." Reference number 12 is an article by the petitioner and nine co-authors, published in *Nephron* in 1994. This sentence does not single out the petitioner's work; rather, it refers to ten separate articles, all of which support the same general assertion, with no indication that any one of these articles is any more important than the others. The petitioner is clearly not unique in studying the correlation between AGEs and diabetes. Nevertheless, out of the various citations of the petitioner's work, counsel chose to highlight this shared one-sentence reference as a representative example of the depth of the petitioner's influence on the field.

As "Evidence of the Wide Implementation of [the petitioner's] Work," the petitioner submits three pages of documents, two of which are the same page, repeated. One document describes one of the petitioner's own ongoing projects (the petitioner is identified by name as one of the participants). The second document, apparently an excerpt from an unidentified longer document, describes "Project 2," which has to do in part with "the regulatory role of estradiol and progesterone in the regulation of BCRP protein expression in the BeWo cells." This fragmentary document does not identify the researchers conducting "Project 2"; the

petitioner himself could well be among them. These two documents are without weight or value as "evidence of the wide implementation of [the petitioner's] work." Counsel's pattern of exaggerated and unsubstantiated claims is, at best, unhelpful.

Counsel observes that the petitioner's work has appeared in journals with high impact factors. The impact factor is calculated from the citation rates of the articles contained in those journals; an uncited or rarely cited article cannot claim automatic or presumptive high impact based on the impact factor of the journal in which it appears. Rather, such an article would merely be on the lower end of the range of numbers used to calculate the aggregate impact factor.

Four new letters accompany the petitioner's response to the request for evidence. One of these letters is a fairly general affirmation of support from [redacted] Professor [redacted] of the University of Kentucky states:

> [The petitioner] is very well-positioned and has had major impact not only in boosting the scientific profile and development of regional, national and international scientific linkages for transporter research and clinical trials, but also to provide scientific and technological insight that will help the United States maintain pre-eminence in the field of transporter research. Based on his prior research achievements in Japan and China, [the petitioner] is the perfect candidate for this position because his research achievements are clearly beyond those of others in his field. . . .
>
> [The petitioner's] findings will certainly stimulate strong interests [*sic*] in many areas, from the fields of modifying drug resistance or drug pharmacokinetics and combining targeting strategy for protection of the fetus. . . .
>
> Because of his very impressive research accomplishments up to now, in my opinion, [the petitioner] has reached the top of his field and his research abilities clearly exceed others with the same qualifications.

Professor [redacted] of the Medical College of Georgia states:

> There is very little information available on the transport of drugs from the mother to the fetus during pregnancy. . . . Recognizing this gap in knowledge, the National Institutes of Health provided funding to establish a Specialized Center for Research (SCOR) at the University of Washington for a group of scientists nationally recognized for their research in this area and [the petitioner] is an important part of this group. . . . I was invited to participate in the annual Advisory Meeting of SCOR Project and discuss the progress of this NIH funded projects [*sic*] being carried out [at the] University of Washington. That is how I became aware of [the petitioner's] research. I was impressed by his knowledge, extraordinary ability, strong love for science and the excellent data from his research. I believe he is a very well qualified scientist and an important contributor to the NIH funded project he is working for.

Professor [redacted] of the University of Maryland contends that the petitioner is "an outstanding scientist who has earned international recognition in his field." [redacted] does not elaborate on this claim. Prof. Ross also states:

> [The petitioner's] work has had great impact on research outside of the University of Washington. The samples he extracted from animals and human cell lines will also be used by other ABC transporter research groups, including Professor Ganapathy's lab at the Medical College of Georgia and by Professor Unadkat's lab at the University of Washington, to reduce the animal use and research expense and to speed up progress. For example, using the samples developed by [the petitioner], it was found that a very important cytochrome P450 enzyme CYP3a expression and activity were upregulated during pregnancy in Professor Unadkat's lab.

While some witnesses assert that the petitioner's work has been especially influential, the record lacks persuasive empirical evidence to confirm this influence or show its extent. Claims of significant international impact are entirely unsubstantiated.

The director denied the petition, acknowledging the substantial intrinsic merit and national scope of the petitioner's work, but finding that the petitioner did not "adequately establish the overall impact of his specific work." On appeal, the petitioner submits several letters and other exhibits as well as a brief from counsel. Many of these exhibits are redundant. For instance, the petitioner resubmits the "Evidence of the Wide Implementation of [his] Work," with no more explanation than before as to the relevance of the materials submitted. The petitioner also resubmits the same list of citations, and the same sample articles with their general, collective references. Counsel does not explain why these materials are more relevant on appeal than they were when first submitted. Resubmission of materials already deemed to be deficient adds nothing of substance to the record, and borders on frivolous conduct.

Of the six letters submitted on appeal, two are new rather than copies of previous submissions. Professor [redacted], in his second letter, asserts that the petitioner's "unusual but extraordinarily valuable combination of expertise in both molecular biology and cellular biology" makes the petitioner's "continued work . . . of vital importance to the outcome of SCOR project." [redacted] of Harvard Medical School is a member of the Independent Advisory Committee for the SCOR project. [redacted] credits the petitioner with several new findings regarding BCRP, stating for instance that the petitioner's "discoveries have presented a breakthrough achievement in our understanding of the regulatory mechanisms of BCRP during pregnancy."

Most of the witnesses have either worked with the petitioner directly, or have been involved with the SCOR project. Subjective attestations of the petitioner's impact and reputation outside of that project lack empirical corroboration. Clearly the petitioner has made productive contributions to a worthwhile project, but the record lacks objective evidence that would persuasively set the petitioner apart from his peers to an extent that would justify a waiver of the statutory job offer requirement that normally attaches to the classification that the petitioner has chosen to seek.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.